IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 481 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NATIONAL SERVICE STATION

Versus

STATE OF GUJARAT

Appearance:

NOTICE SERVED for Petitioner No. 1-3
MR B.Y.MANKAD, PP for Respondent No. 1-2

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 11/09/2001

ORAL JUDGEMENT

Respondent No.2 - Junior Supervisor Metrology Division-3, Baroda filed a Criminal Complaint against the present applicants being Criminal Case No.2552 of 1997 in

the Court of Judicial Magistrate (First Class), Baroda for the offences punishable under Section 39(2) of the standards of Weights and Measures (Enforcement) Act, 1985.

2. The present three applicants, partners of National Service Station, a partnership firm, were carrying on a business of Petrol Pump No.0259 and it was found that there was short delivery of petrol of average 7.6 ml. per every liter. The concerned officer after checking this in presence of panchas drawn a panchnama on 20th June, 1996 and as per the provisions of Section 33 of the above said act, the said petrol pump was sealed and above complaint came to be filed against the present applicants-original accused. Pending the trial the present applicants-original accused filed an application at Exh.7 on 2nd December, 1997 and claimed the reliefs that the seal on the petrol pump be removed and the petrol pump be recalibrated by authorized agency and in the meantime, the applicants be permitted to remove the said petrol pump to some other place and be permitted to run the petrol pump.

3. After hearing the parties the learned Magistrate came to the conclusion that the Magistrate has no authority to grant the reliefs to the accused - present applicants for removing the petrol pump and to grant recalibration under Sections 451 and 457 of the Cr.P.C. because the pump was sealed and seized and has become the muddamal of the case and, therefore, the learned Magistrate rejected the request of the present applicants for the recalibration / removal of the Pump from the place that was originally installed.

4. The applicants relied on the decision of this Court in Special Criminal Application No.1517 of 1996 decided on 10th February, 1997 and contended that the Hon'ble High Court permitted in that case for the recalibration of the petrol pump and removal of the seal and for running of the petrol pump. The learned Magistrate rejected this contention also advanced by the present applicants - original accused and hence against the impugned order of the learned Magistrate passed on 30th June, 1999, rejecting the application of the present applicants-original accused filed at Exh.7, this revision is filed.

5. The applicants appeared through their learned advocates. However, their learned Counsel being elevated to Bench, this Court issued notices to the applicants to appear before this Court or to engage some other

advocates. Those notices are duly served upon the petitioners but they have not appeared on 28th August, 2001. Thereafter, also the matter was fixed today and calling out, none has appeared on behalf of the applicants today also. Learned A.P.P. Mr.B.Y.Mankad for Respondent Nos.1 and 2 appeared.

6. When the legality and validity are brought to the notice of this Court by way of this revision application, the impugned order is required to be examined on merits. On examining the record available and going through the order impugned, it clearly appears that the learned Magistrate has not erred in passing the impugned order rejecting the application at Exh.7 on 30th June, 1999 filed by the present applicants because the reliefs claimed was either to remove the petrol pump from the present installation or to allow the applicants for recalibration by authorized agency. The decision of this Court in Special Criminal Application No.1517 of 1996, the State of Gujarat V/s. M/s Aklapuri Automobiles referred above is not helping the present applicants' case. Wherein the authorized officer agreed for the recalibration and/or removing of the seal on the concerned petrol pump. On the contrary in such circumstances, this Court in Letters Patent Appeal No.1048 of 1998 in the matter of State of Gujarat V/s. Darshanbhai Hemantbhai Patel vide the decision dated 16th September, 1998 set aside the order of the single Judge permitting recalibration of the petrol pump and the learned Metropolitan Magistrate before whom the prosecution was pending was directed to expedite the said prosecution.

7. In this view of the matter, the impugned order passed by the learned Magistrate on 30th June, 1999, rejecting the application Exh.7 requires no interference in revisional jurisdiction. However, learned Judicial Magistrate (First Class), 2nd Court, Baroda is directed to expedite hearing of the Criminal Case No.2552 of 1997 as far as possible and dispose of the same as early as possible.

This Revision Application stands dismissed. Rule discharged.

(J.R.Vora, J)

'Bhavesh'